

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

DALIA LIZETH ROMAN,)	No. CV-F-04-5814 OWW
)	(No. CR-F-02-5379 OWW)
)	
Petitioner,)	MEMORANDUM DECISION DENYING
)	PETITIONER'S MOTION TO
vs.)	VACATE, SET ASIDE OR CORRECT
)	SENTENCE PURSUANT TO 28
)	U.S.C. § 2255 AND DIRECTING
UNITED STATES OF AMERICA,)	CLERK OF COURT TO ENTER
)	JUDGMENT FOR RESPONDENT
)	
Respondent.)	
)	
)	

On June 9, 2004, Petitioner Dalia Lizeth Roman timely filed a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255.

A. BACKGROUND.

Petitioner was charged by Superseding Information with use of a communication facility in connection with a drug offense in violation of 21 U.S.C. § 843(b). Petitioner pleaded guilty pursuant to a written Plea Agreement. The Plea Agreement specifically provided:

1 Defendant, Dalia Roman, hereby acknowledges
2 the benefits she has received pursuant to the
3 plea disposition set forth in this memorandum
4 and her guilt of the offense to which she is
5 pleading guilty. Defendant hereby waives all
6 rights to contest the means by which her plea
7 of guilty will be entered before the District
8 Court. This waiver includes, but is not
9 limited to, any claim, whether in District
10 Court or in appellate proceedings and on
11 direct appeal or subsequently, that the
12 dictates of Federal Rule of Criminal
13 Procedure 11, or any successor Rules,
14 legislation or case authority, were not
15 followed in the entry of defendant Roman's
guilty plea. The defendant is also aware
that Title 18, United States Code, Section
3742 affords a defendant the right to appeal
the sentence imposed. Acknowledging all
this, the defendant knowingly waives the
right to appeal, on any ground whatsoever,
any sentence so long as the initial term of
imprisonment is four (4) years or less. The
defendant also waives her right to challenge
her conviction, sentence or the manner in
which her sentence was determined in any
collateral attack, including but not limited
to a motion brought under Title 18, United
States Code, Sections 2255 or 2241.

16 Petitioner was sentenced on October 27, 2003 to 48 months
17 incarceration and 12 months of supervised release. Petitioner
18 did not file a Notice of Appeal.

19 B. GROUND'S FOR RELIEF.

20 1. Ineffective Assistance of Counsel.

21 Petitioner contends that she is entitled to relief because
22 of ineffective assistance of counsel. Petitioner asserts that
23 counsel was ineffective because "he never ensure a fair
24 proceeding, he only came to visit movant one or two times in the
25 whole process and one of those times when he came he ask movant
26 to sign the Plea Agreement without giving movant any explanation

1 or information in reference to what she was singning [sic]."
2 Petitioner asserts that "counsel never told movant of her rights
3 he never fully informed her of the rights relinquished by
4 pleading guilty."

5 Claims asserting the ineffective assistance of counsel are
6 analyzed under the two-prong test announced in *Strickland v.*
7 *Washington*, 466 U.S. 668 (1984). As explained in *United States*
8 *v. Quintero-Barraza*, 78 F.2d 1344, 1348 (9th Cir. 1995), *cert.*
9 *denied*, 519 U.S. 848 (1996):

10 According to *Strickland*, there are two
11 components to an effectiveness inquiry, and
12 the petitioner bears the burden of
13 establishing both ... First, the
14 representation must fall 'below an objective
15 standard of reasonableness.' ... Courts
16 scrutinizing the reasonableness of an
17 attorney's conduct must examine counsel's
18 'overall performance,' both before and at
19 trial, and must be highly deferential to the
20 attorney's judgments ... In fact, there
21 exists a 'strong presumption that counsel
22 "rendered adequate assistance and made all
23 significant decisions in the exercise of
24 reasonable professional judgment."' ... In
25 short, defendant must surmount the
26 presumption that, 'under the circumstances,
the challenged action "might be considered
sound trial strategy."' ... Thus, the proper
inquiry is 'whether, in light of all the
circumstances, the identified acts or
omissions were outside the wide range of
professionally competent assistance.'

27 If the petitioner satisfies the first prong,
28 he must then establish that there is 'a
29 reasonable probability that, but for
30 counsel's unprofessional errors, the result
31 would have been different'

32 Where a petitioner enters a guilty plea upon the advice of
33 counsel, the voluntariness of the plea depends upon whether the

1 petitioner received effective assistance of counsel. In order to
2 prevail on an ineffective assistance of counsel claim, "the
3 [petitioner] must show that there is a reasonable probability
4 that, but for counsel's errors, he would not have pleaded guilty
5 and would have insisted on going to trial." *Hill v. Lockhart*,
6 474 U.S. 52, 56-57 (1985).

7 The Plea Agreement executed by Petitioner, her attorney,
8 James Elia, and the Assistant United States Attorney,
9 specifically sets forth all of the statutory and constitutional
10 rights Petitioner would relinquish by pleading guilty.
11 Petitioner was placed under oath prior to pleading guilty
12 pursuant to the Plea Agreement. Petitioner stated under oath
13 that she had read the Plea Agreement, that she had discussed it
14 with her attorney and that she understood the Plea Agreement.¹
15 The Court reviewed with Petitioner every aspect of the Plea
16 Agreement, including the elements of the offense and the maximum
17 punishment allowed by law, and the various statutory and
18 constitutional rights relinquished by pleading guilty.
19 Petitioner's assertions of ineffective assistance of counsel are
20 not supported by the record. Further, Petitioner makes no
21 contention that she would not have pleaded guilty and would have
22

23 ¹Petitioner intimates in her motion that she does not speak
24 English. This intimation is not supported by the record.
25 Petitioner stated at sentencing that she had lived in the United
26 States since she was one-year old, that she was a graduate of
Roosevelt High School and had participated in school government
activities. The docket does not show that Petitioner was ever
assisted by the Court interpreter.

1 insisted on going to trial.

2 Petitioner's motion for relief on the ground of ineffective
3 assistance of counsel is DENIED.

4 2. Disparity in Sentence/Cruel and Unusual Punishment.

5 Petitioner moves the Court "to reconsider the sentence
6 imposed and to reduce her sentence to levels which are more
7 representative of the rehabilitative goals of the Criminal
8 Justice System." Petitioner "only request [sic] this in view of
9 the unusual severity of her sentence for a routine narcotic
10 case."

11 Petitioner is not entitled to relief pursuant to Section
12 2255. In the Plea Agreement, Petitioner specifically waived her
13 right to challenge her sentence so long as it was four years or
14 less. Petitioner was sentenced to 48 months.

15 Petitioner's motion for relief on this ground is DENIED.

16 3. Violation of Rule 32, Federal Rules of Civil
17 Procedure.

18 Petitioner moves for relief on the ground that "the Court
19 erred by failing to make specific findings as to the accuracy of
20 information in the presentence report." Petitioner asserts that
21 she "keep telling Counsel of all the issues that movant was not
22 in agree [sic], and the counsel keep saying that this would not
23 affect her sentence and that she was not going to do jail time
24 that he had control of everything Counsel never sit down with
25 movant to discuss all the discrepancies [sic] on the presentence
26 report." Petitioner contends that the presentence report

1 "contains several factual inaccuracies, presumably offered by the
2 government for example [sic] quantaty of drugs used for
3 sentencing, criminal history, realation [sic] with the co-
4 defendants and so many issues that movant do not agree and kept
5 telling the counsel to object to all those issues but nounsel
6 [sic] never argue to all this descripancies."

7 Petitioner's contentions are belied by the record and
8 without merit. Petitioner stated to the Court that she had read
9 the presentence report and discussed it with Mr. Elia.
10 Petitioner was given the opportunity to address the Court prior
11 to the imposition of sentence. At no time did Petitioner assert
12 that the presentence report was inaccurate in any way.
13 Petitioner admitted the drug quantity when she pleaded guilty and
14 her relations with the co-defendants was known to the Court. The
15 presentence report indicated that Petitioner had no prior
16 criminal history.

17 Petitioner's motion for relief on this ground is DENIED.²

18 CONCLUSION

19 For the reasons stated:

- 20 1. Petitioner Dalia Lizeth Roman's motion to vacate, set
21 aside or correct sentence pursuant to 28 U.S.C. § 2255 is DENIED.
22 2. The Clerk of the Court is directed to enter Judgment for
23

24 ²On December 20, 2004, Petitioner applied to amend her Section
25 2255 motion to include a claim for relief pursuant to *Blakely v.*
26 *Washington*, 542 U.S. 296 (2004). *Blakely* is not retroactive to
cases on collateral review. *Schardt v. Payne*, 414 F.3d 1025 (9th
Cir.2005)

1 **Respondent .**

2 IT IS SO ORDERED.

3 **Dated: May 27, 2008**

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE